

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

MOBILE TELECOMMUNICATIONS
TECHNOLOGIES, LLC

v.

CLEARWIRE CORPORATION.

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Case No. 2:12-CV-308-JRG-RSP

ORDER

Currently before the Court is Clearwire's Motion for Relief Pursuant to Federal Rule of Civil Procedure Rule 37(c)(1) (Dkt. 149, the "Motion"). Clearwire takes issue with MTEL's allegedly late disclosure of the "source code containing the modeling, inputs, and simulations that serve as the entire basis for that damage theory." (*Mot.* at 1.) The Court observes that it does appear that MTEL sent "live computer code for the COST 231 radio wave model" to Clearwire in December. (Dkt. 182 at 1.) However, it is clear from the record in this case that Clearwire did have notice of Mr. Vojcic's use of the COST 231 model long before this disclosure. Thus, the Court **GRANTS-IN-PART** the Motion to the very limited extent that Mr. Vojcic will not be able to introduce the actual "live computer code" produced in December on direct examination. If Clearwire wishes to address the basis for Mr. Vojcic's model, however, they may open the door to the use of this code. Further, the Court finds it is inappropriate to restrict Mr. Vojcic's testimony as to the basis for his opinions to the extent it is covered in his timely filed expert report, including the use of the COST 231 model. Thus, the Court **DENIES-IN-PART** the Motion as to the remainder of Mr. Vojcic's testimony.

SIGNED this 30th day of January, 2014.


ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE